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10  
11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13  
14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 vs.

18 BANC DE BINARY LTD, OREN SHABAT  
19 MR. LAURENT (f/k/a OREN SHABAT), ET  
20 BINARY OPTIONS LTD., BO SYSTEMS  
LTD. SEYCHELLES and BDB SERVICES  
21 LTD. SEYCHELLES,

22 Defendants.  
23  
24  
25  
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27  
28

Case No. 2:13-cv-00993-RCJ-VCF

**PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
STATEMENT OF UNCONTROVERTED  
FACTS IN SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT AGAINST  
DEFENDANTS OREN SHABAT MR.  
LAURENT (F/K/A OREN SHABAT), ET  
BINARY OPTIONS LTD. AND BO  
SYSTEMS LTD. SEYCHELLES**

FILED UNDER SEAL PURSUANT TO COURT  
ORDER DATED July 14, 2014 (Dkt. No. 69)

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**I. INTRODUCTION**

Plaintiff Securities and Exchange Commission (the “SEC”) files this Statement of Uncontroverted Facts in Support of its Motion for Summary Judgment in accordance with Fed. R. Civ. P. 56(c)(1) and Local Rule 56-1.

**II. STATEMENT OF UNCONTROVERTED FACTS**

**A. “Banc de Binary”**

**1. ETBO and BO Systems, and the Banc de Binary Group**

1. Defendants Banc de Binary Ltd (“BdB Ltd”), ET Binary Options Ltd. (“ETBO”), BO Systems Ltd. Seychelles (“BO Systems”) and BDB Services Ltd. Seychelles (“BDB Services”) are part of a group of companies the Defendants call the “Banc de Binary Group.” Declaration of John W. Berry (“Berry Decl.”) Ex. A (Kosma Depo. Tr.) at 19:2-25, 20:1-22, 51:23-52:16, 58:3-8.

2. The entities in the Banc de Binary Group, including ETBO and BO Systems, do business under the name “Banc de Binary.” *Id.* Ex. A (Kosma Depo. Tr.) at 65:25-66:11; *id.* Ex. B (Laurent Depo. Tr.) at 26:12-19.

3. All of the entities in the Banc de Binary Group work together to further the interests of the collective group. *See id.* Ex. B (Laurent Depo. Tr.) at 46:19-24.

4. BdB Ltd is incorporated in the Republic of Cyprus and regulated by the Cyprus Securities and Exchange Commission (“CySEC”). *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 12, Defs. Answer. (Dkt. No. 64) ¶ 12.

5. BdB Ltd is a company licensed by or with CySEC. ETBO, BO Systems and BDB Services are not companies licensed by or with CySEC. *See* Sec. Am. Compl. (Dkt. No. 58) ¶¶ 58-59, Defs. Answer. (Dkt. No. 64) ¶¶ 58-59.

6. ETBO is incorporated in Israel. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 13, Defs. Answer. (Dkt. No. 64) ¶ 13.

7. BO Systems is incorporated in the Republic of Seychelles. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 14, Defs. Answer. (Dkt. No. 64) ¶ 14.

8. BDB Services is incorporated in the Republic of Seychelles. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 15, Defs. Answer. (Dkt. No. 64) ¶ 15.

1           9.       ETBO and BO Systems have common ownership and are affiliates of one another.  
2       *See* Berry Decl. Ex. A (Kosma Depo. Tr.) at 19:2-25, 20:1-22, 51:23-52:16, 58:3-8.

3           10.       ETBO and BO Systems are affiliates of BdB Ltd. *See id.* Ex. A (Kosma Depo. Tr.)  
4       at 19:2-25, 20:1-22, 51:23-52:16, 58:3-8.

5                   **2.       Mr. Laurent's role**

6           11.       According to Mr. Laurent, he and his father own the Banc de Binary Group. *See id.*  
7       Ex. B (Laurent Depo. Tr.) at 56:15-17.

8           12.       Mr. Laurent is the founder, president and chief executive officer of BdB Ltd. *See*  
9       Sec. Am. Compl. (Dkt. No. 58) ¶ 17, Defs. Answer. (Dkt. No. 64) ¶ 17.

10          13.       Mr. Laurent is the 50% shareholder of BdB Ltd; the other 50% shareholder is his  
11       father. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 18, Defs. Answer. (Dkt. No. 64) ¶ 18.

12          14.       From at least 2010 to 2012, Mr. Laurent was the sole shareholder of ETBO. *See* Sec.  
13       Am. Compl. (Dkt. No. 58) ¶ 19, Defs. Answer. (Dkt. No. 64) ¶ 19; *see also* Berry Decl. Ex. A  
14       (Kosma Depo. Tr.) at 62:4-8 (no reason to doubt ETBO's answer to complaint allegation).

15          15.       Mr. Laurent is the sole beneficiary owner of BO Systems. *See* Sec. Am. Compl.  
16       (Dkt. No. 58) ¶ 15, Defs. Answer. (Dkt. No. 64) ¶ 15.

17          16.       Mr. Laurent founded the "Banc de Binary" business. *See* Berry Decl. Ex. A (Kosma  
18       Depo. Tr.) at 65:17-20.

19          17.       Mr. Laurent developed the binary option trading software that was used, and  
20       continues to be used, on the "Banc de Binary" websites. *See id.* Ex. B (Laurent Depo. Tr.) [REDACTED]  
21       34:1 ("[REDACTED]"), 76:10-

22       [REDACTED]  
23          18.       Mr. Laurent founded ETBO. *See id.* Ex. A (Kosma Depo. Tr.) at 65:17-20.

24          19.       From at least 2010 to sometime in 2012, Mr. Laurent was the CEO of ETBO and ran  
25       that company. *See id.* Ex. A (Kosma Depo. Tr.) at 74:9-18, 79:17-19, 366:2-15.

26          20.       During the time he was the CEO of ETBO, he "[REDACTED]" and "[REDACTED]"  
27       in the "Banc de Binary" business. *See id.* Ex. B (Laurent Depo. Tr.) at 152:9-153:3.

28          21.       During the time he was the CEO of ETBO, he was in charge of the marketing

1 materials for the “Banc de Binary” business. *See id.* Ex. B (Laurent Depo. Tr.) at 160:19-20.

2 22. When Mr. Laurent was not the CEO of ETBO, the CEO of ETBO ran the company  
3 at the direction of Mr. Laurent because Mr. Laurent owned the company and was also a director.  
4 *See id.* Ex. A (Kosma Depo. Tr.) at 79:20-24.

5 23. Mr. Laurent is “the face” of the “Banc de Binary” brand. *See* Defs. Answr. (Dkt.  
6 No. 64) ¶ 32. But at no point in time was Mr. Laurent just the face of the organization who did not  
7 do anything with respect to the Banc de Binary Group business. *See id.* Ex. A (Kosma Depo. Tr.) at  
8 370:19-24.

9 24. Mr. Laurent had specific duties in the Banc de Binary Group organization, and has  
10 always been actively involved in that business—even when someone else was the CEO. *See id.*  
11 Ex. A (Kosma Depo. Tr.) at 370:19-371:10.

12 25. Until at least July 2012, Mr. Laurent was responsible for the marketing and  
13 promotion of the “Banc de Binary” brand. This included promoting the “Banc de Binary” binary  
14 option trading services worldwide, including to U.S.-based customers. *See id.* Ex. A (Kosma Depo.  
15 Tr.) at 367:18-369:15.

16 26. The “Banc de Binary” website [www.bbinary.com](http://www.bbinary.com) listed Mr. Laurent as the “Chief  
17 Executive Officer,” and stated that he was the “co-founder of Banc De Binary.” It also stated that  
18 Mr. Laurent “has been a driving force in developing and implementing the global strategies that  
19 have made Banc De Binary a leader in Binary Options.” *See id.* Ex. D (Depo. Ex. 3) (Oct. 2010  
20 website screenshot); *id.* Ex. B (Laurent Depo. Tr.) at 153:13-25 (Mr. Laurent authenticating and  
21 recognizing website screenshot).

22 27. In October 2010, the “Banc de Binary” website [www.bbinary.com](http://www.bbinary.com) included a “Letter  
23 from the CEO,” which Mr. Laurent read and signed, and which included a picture of Mr. Laurent.  
24 In that letter, he stated:

25 .... Don’t understand option trading? Read about it, learn about it, become as  
26 knowledgeable as you can before investing your money. Then and only then are  
27 your chances of succeeding higher than your chances of failure.

28 *See id.* Ex. C (Depo. Ex. 2) (Oct. 2010 website screenshot); *id.* Ex. B (Laurent Depo. Tr.) at 151:17-

1 8 (Mr. Laurent authenticating and recognizing website screenshot and letter, and acknowledging the  
2 letter was “[REDACTED]”).

3 28. In September 2012, the “Banc de Binary” website [www.bbinary.com](http://www.bbinary.com) included a  
4 “Letter from CEO,” which Mr. Laurent read and signed, and which included a picture of Mr.  
5 Laurent. In that letter, he stated:

6 Dear Valued Customer,

7 Welcome to our Banc De Binary community.

8 I’d like to take this opportunity to share my enthusiasm and excitement for the  
9 innovate trading and banking enterprise that we have embarked on. ...

10 ... Our senior staff come from the old world of traditional investments. They are  
11 passionate about the need for a trading revolution, and together have the knowledge  
12 and skills to deliver it....

13 We are firmly committed to developing cutting edge trading services and financial  
14 security.

15 *See id.* Ex. G (Depo. Ex. 6) (Sept. 2012 website screenshot); *see id.* Ex. B (Laurent Depo. Tr.) at  
16 179:16-180:10 (Mr. Laurent authenticating and recognizing website screenshot and letter, and  
17 acknowledging he read and signed letter).

18 29. The “Banc de Binary” website [www.bbinary.com](http://www.bbinary.com) listed “Our Executive Team,”  
19 which included Mr. Laurent, with the title of “Chief Executive Officer.” It further stated that: “As  
20 co-founder, Mr. Laurent has used his vast experience in international trading and hedging to  
21 develop the global strategies that have made Banc De Binary the world leader in binary options.”  
22 *Id.* Ex. H (Laurent Depo. Ex. 7) (Sept. 2012 website screenshot); *see id.* Ex. B (Laurent Depo. Tr.)  
23 at 183:24-184:6 (Mr. Laurent authenticating and recognizing website screenshot).

24 30. Mr. Laurent participated in “[REDACTED]” videos about “Banc de Binary” that were  
25 put on the internet to give “[REDACTED].” *Id.* Ex. B (Laurent Depo. Tr.) at  
26 200:3-16, 201:15-16, 216:20-24, 218:18-20; *see also id.* at 198:17-205:10 (transcription of  
27 “[REDACTED]” video, marked as Ex. 8 in deposition), 217:11-225:2 (transcription of “[REDACTED]”  
28 video, marked as Ex. 9 in deposition).

1           31.     The following is an accurate transcription of a video, posted on the internet, in which  
2 Mr. Laurent participated in 2012:

3                   VOICEOVER: This is a story of a legacy. Banc de Binary was founded in  
4 2009 out of a small office in New York by four brokers determined to make a  
5 difference in the financial markets. They drew on their wealth of experience,  
6 ambition, and financial talent and developed Banc de Binary into the leading  
7 company in binary options. Today, Banc de Binary is the first licensed broker  
8 focused solely on binary options. Chief executive officer Oren Mr. Laurent is often  
9 asked about the secret to the success.

10                  MR. LAURENT: Our first priority has always been the customer. Being that,  
11 our customer service is par none, is really par none. Our brokers are the best in the  
12 industry, by far. Our recruiting process is very stringent. We know what we're  
13 looking for. We welcome anybody who is up to the challenge to go through our so-  
14 called boot camp for brokers, and we've done it here in Cyprus all over again. So  
15 we've implemented those same values we started off with, but we refined them when  
16 we came here to Cyprus. So if you look literally behind me or to the sides, you will  
17 see the best brokers in the industry right now helping clients achieve their financial  
18 goals.

19                  VOICEOVER: The world needed a trading revolution after traditional  
20 investments proved to have limited and unstable returns during the financial crisis in  
21 the U.S. and EU.

22                  MR. LAURENT: In 2009, we were a group of brokers that had taken kind of  
23 a wider scope on the financial crisis. And we started looking for ways to simplify  
24 trading for the mass public. We found a financial product which we could simplify,  
25 explain to everyone, and have anyone trading in a matter of minutes. And that's  
26 what brought us to the point we are today.

27                  VOICEOVER: Binary options are a safer way to trade assets like currencies  
28 or commodities. Also called all-or-nothing options or digital options, profits or

1 losses are based on whether an underlying asset will go up or down. This new  
2 financial instrument has simplified trading to the extent that anyone can understand  
3 and use the advanced trading platform on Banc de Binary's website.

4 We have offices in four countries, and our European headquarters is Limassol,  
5 Cyprus. Cyprus is ideal as a strategic location for marketing to the EU and as a  
6 business center.

7 CySEC has just started licensing binary options firms, which is another  
8 important reason we have opened an office here. We are extremely proud to be the  
9 first binary options broker to be licensed by CySEC.

10 Cyprus is a world-renowned financial services center that has developed  
11 infrastructure that is business friendly. We trust Cyprus to be the best place to  
12 develop our growing company.

13 The licensing of Banc de Binary in Cyprus is a remarkable milestone that we  
14 are celebrating today. It means more benefits and protection for traders and binary  
15 options brokers. We believe that this regulation will benefit Cyprus' economy very  
16 strongly as more binary options brokers apply for regulation and start hiring more  
17 staff and investing in the island.

18 By the end of 2013, we expect to reach the half a million mark on our client  
19 list. We will concentrate and develop our presence in European, Middle East, and  
20 Asian markets.

21 Our immediate focus is on educating and informing our clients about trading  
22 binary options.

23 We value our trading clients very highly and offer them many levels of  
24 support from demo accounts for the learner all the way to concierge service in our  
25 VIP Lion's Club.

26 We are proud to have won prestigious awards for best customer service, best  
27 broker, and platform of the year, to name a few. Banc de Binary is a World Finance  
28 100 awarded company.



1           Banc de Binary offers over 90 assets in commodities, currencies, indices, and  
2           stocks. Banc de Binary clients can trade over 90 assets on the most advanced trading  
3           platforms, including the Option Builder, One Touch, 60 Seconds and Binary META.  
4           Our thanks to all who have supported our growth and expansion through the years.  
5           Banc de Binary: World, wisdom, profit.

6   *See id.* Ex. B (Laurent Depo. Tr.) at 198:17-205:10; *see also id.* at 200:3-16, 201:15-16.

7           32.     The following is an accurate transcription of a video, posted on the internet, in which  
8   Mr. Laurent participated in the “[REDACTED]”:

9           MS. FENWICK: We’re here in Limassol, Cyprus, with Oren Mr. Laurent, the  
10          founder of Banc de Binary and the (audio cuts out) industry. Oren, tell me, what  
11          inspired you to start Banc de Binary?

12          MR. LAURENT: Well, in 2009 we were a group of brokers that had taken  
13          kind of a wider scope on the financial crisis, and we started looking for ways to  
14          simplify trading for the mass public. After a while, it occurred to us that in 2008 the  
15          SEC listed binary options, and the rest was history. I mean, we found ourselves in a  
16          position where anyone could trade. We found the financial product which we could  
17          simplify, explain to everyone, and have anyone trading in a matter of minutes. And  
18          that’s what brought us to the point we are today.

19          MS. FENWICK: Interesting. Why did you choose the binary options sector,  
20          actually? What’s special for it for you?

21          MR. LAURENT: The simplification of the industry, if that’s an actual word  
22          that I could use. I would have to say that it’s just so simple and easy to explain to a  
23          client that an hour on the retail end, it makes the broker’s job much easier and helps  
24          the client get into the markets at an amazing speed and trading right away.  
25          I’ll give you a very quick example. If you’re at home watching the news, and all of a  
26          sudden you see that oil is rising because of a Nigerian pipe burst or whatnot.

27          MS. FENWICK: Yes.

28          MR. LAURENT: If you’re sitting at home and you’re watching that for

1 some reason or other, what does that affect you in any way? The average person  
2 doesn't take that right to the markets. I'm not going to start to explain vanilla  
3 options to him over the phone, and he's not going to want to take that action either.  
4 Here with binary options, it's so simple that literally, the same actions that you do  
5 day-to-day, by watching the news, by turning on Bloomberg, by reading the paper,  
6 are the same actions you can take online.

7 So it simplified the entire industry, the entire trading, the online trading  
8 industry, and it brought us to—again, to the point we are at today with over 200,000  
9 client accounts.

10 MS. FENWICK: Binary options are interesting in the sense that they can be  
11 very short-term trades, can't they, as well? You can have 60-second trades, you can  
12 have 15-minute trades, and you see almost immediate results. How do you find that  
13 people like that? Do they—do they accept that? Do they enjoy that?

14 MR. LAURENT: Well, the key word here that I would have to use is  
15 diversification. The fact that you can trade anywhere from 60 seconds to an end of  
16 the year gives people a sense of diversity that they can—they can trade their thoughts  
17 almost instantly on almost any trade, or they can look at it long-term. And long-term  
18 is a completely different sort of binary option, but at the same time, since our  
19 platform offers both ends, traders have the ability to manage their risk just in that—  
20 in that type of a trading environment.

21 MS. FENWICK: So, actually, it's simple, and it's also very flexible time  
22 wise.

23 MR. LAURENT: It's simple, flexible, safe, and to be regulated very, very  
24 soon.

25 MS. FENWICK: It's going to be regulated. Isn't that the latest development  
26 in the binary options industry is this regulation?

27 MR. LAURENT: It definitely is. The latest development in the binary  
28 option industry is that we are finally going to have a regulated financial product.

1 MS. FENWICK: And is that a good thing?

2 MR. LAURENT: It's a wonderful thing. It's a wonderful thing both for the  
3 trader and for the company. As the trader, now you have this --you're backed by a  
4 certain security or a government entity that backs your trading and your funds.  
5 Whereas in Banc de Binary, as strong as we are, as financially stable as we are, we  
6 can't provide that type of security for the end trader.

7 Now, CySEC, which is the reason that we're sitting here in Limassol today,  
8 CySEC will be our regulator in the very near future, and all the critics to binary  
9 options will—will now have something new to criticize about.

10 MS. FENWICK: They may have to change their criticism, actually.

11 MR. LAURENT: They will. They'll either change their criticism. Then  
12 they'll have to find something new. But it's okay.

13 MR. LAURENT: —quite a while, so ....

14 MS. FENWICK: So if a company has a license with CySEC, they are  
15 passported into other European territories automatically; is that correct?

16 MR. LAURENT: Correct. What we do is you take that same license, and  
17 you start passporting it to the other X amount of countries in the European—that's  
18 29, I believe it is today?

19 MS. FENWICK: Yes.

20 MR. LAURENT: —29 countries right now that are in the European Union.  
21 For example, we can passport it to the U.K. and receive the FSA. So, again,  
22 something new for the critics.

23 MS. FENWICK: That's brilliant. So it's—binary options are really  
24 expanding, so—as an industry itself.

25 MR. LAURENT: As an industry, it's completely booming. As an industry,  
26 we—if you looked a year ago at search results, whether in Google, Alexa, so on and  
27 so on, or looked at hits that went to binary options sites, you would be astonished by  
28 the level of progress. The chart is literally in an upward scale, and it hasn't moved in

the past 12 months. We do estimate that in the next three to four years, binary options will start challenging your traditional forex.

MS. FENWICK: It's going to be huge, yes. So what is your vision for Banc de Binary?

MR. LAURENT: Banc de Binary at the current moment is looking to expand, whether in different countries, regions, licenses, so on and so on. We're looking for expansion. We currently have four offices globally, and—

MR. LAURENT: —we expect by the end of 2013 to have at least six operational offices, representing also the Asian region and, of course, another office to represent the Middle East. At the current moment, we have the current office in Cyprus and New York being the main offices, and London being a walk-in.

*See id.* Ex. B (Laurent Depo. Tr.) at 217:11-225:2; *see also id.* at 216:20-24, 218:18-20.

33. Mr. Laurent received proceeds from the sale of binary options by the Banc de Binary Group. *See id.* Ex. B (Laurent Depo. Tr.) at 163:21-164:9.

34. Mr. Laurent was paid about \$1 million in dividends or other compensation in 2013. *See id.* Ex. B (Laurent Depo. Tr.) at 243:6-16.

35. Mr. Laurent is the signatory on BdB Ltd's bank accounts. *See* SDefs. Answr. (Dkt. No. 64) ¶ 32.

## **B. The “Banc de Binary” Binary Options and Internet Trading Platforms**

### **1. Binary options**

36. In general, a “binary option” is a security whose payout is contingent on the future value of an underlying asset. *See id.* Ex. A (Kosma Depo. Tr.) at 47:14-48:4; *see also* Sec. Am. Compl. (Dkt. No. 58) ¶ 35, Defs. Answr. (Dkt. No. 64) ¶ 35.

37. Binary options are securities under the U.S. federal securities laws. *See* Order denying motion for reconsideration and granting preliminary injunction. (Dkt. No. 31) at 10-11; Order granting preliminary injunction. (Dkt. No. 28) at 10-11.

38. One of the “Banc de Binary” online trading websites is [www.bbinary.com](http://www.bbinary.com). On that website, investors can buy binary options whose payouts are contingent on the value of a variety of

underlying assets. These underlying assets include stock of companies and broad-based, published stock indices like the S&P 500, as well as commodities and currencies. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 35, Defs. Answer. (Dkt. No. 64) ¶ 35; *see also* Berry Decl. Ex. A (Kosma Depo. Tr.) at 47:14-48:4.

39. The website [www.bbinary.com](http://www.bbinary.com) portrays the binary options as “investments,” and refers to the “trading” of options. The website also explains that binary options are regulated by the CySEC. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 37, Defs. Answer. (Dkt. No. 64) ¶ 37.

40. The website [www.bbinary.com](http://www.bbinary.com) provided five different ways to purchase binary options—or “trading platforms”—each of which offers different features for creating binary options. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 38, Defs. Answer. (Dkt. No. 64) ¶ 38.

41. In general, a “Banc de Binary” customer can purchase a binary option by taking the following steps with these trading platforms. First, the customer selects the underlying asset—for example, a stock or stock index. Second, the customer then chooses whether he or she wants a binary option that pays out if the price of the underlying asset will go up (a “call option”) or down (a “put option”). Third, the customer inputs his or her investment amount (generally between \$1 and \$3,000). Finally, the customer selects an expiration period, which could be as little as 60 seconds. The “Banc de Binary” website then states the payout amount (e.g., 72%) for the binary option created by the customer. At that point, the “Banc de Binary” customer can click a button on the website in order to purchase the binary option. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 39, Defs. Answer. (Dkt. No. 64) ¶ 39.

42. The payout is determined at the end of the expiration period of the binary option purchased by the investor. If the price of the underlying asset moved in the direction selected by the investor, then the investor receives the pre-determined payout amount set when he or she purchased the binary option; if the price moved in the other direction, then the investor forfeits the purchase price of the binary option. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 40, Defs. Answer. (Dkt. No. 64) ¶ 40.

## 2. The “Banc de Binary” trading platform websites

43. In addition to [www.bbinary.com](http://www.bbinary.com), the “Banc de Binary” business also maintains a

1 website [www.bancdebinary.com](http://www.bancdebinary.com), among others. *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 36, Defs.  
 2 Answer. (Dkt. No. 64) ¶ 36.

3 44. Investors could buy binary options on two websites operating under the “Banc de  
 4 Binary” name: [www.bbinary.com](http://www.bbinary.com) and [www.bancdebinary.com](http://www.bancdebinary.com). *See* Berry Decl. Ex. A (Kosma  
 5 Depo. Tr.) at 114:18-23; Ex. B (Laurent Depo. Tr.) at 74:14-75:8.

6 45. The “Banc de Binary” websites offered a “[REDACTED]” where binary options  
 7 can be bought. *See id.* Ex. A (Kosma Depo. Tr.) at 90:6-22.

8 46. From at least September 2010 through June 2013, the websites [www.bbinary.com](http://www.bbinary.com)  
 9 and [www.bancdebinary.com](http://www.bancdebinary.com) were made available to and were accessible by U.S.-based customers.  
 10 *See id.* Ex. A (Kosma Depo. Tr.) at 119:9-18; 122:3-7, 125:18-22.

11 47. Until at least May 2012, the “Banc de Binary” websites [www.bbinary.com](http://www.bbinary.com) and  
 12 [www.bancdebinary.com](http://www.bancdebinary.com) were “[REDACTED],” regardless of whether the person using the  
 13 websites were in the U.S. or not. *Id.* Ex. A (Kosma Depo. Tr.) at 116:20-117:6.

14 48. “Banc de Binary” videos were posted on the internet to promote the “Banc de  
 15 Binary” brand. *See id.* Ex. B (Laurent Depo. Tr.) at 169:1-170:4.

### 16 3. The “Banc de Binary” “brokers”

17 49. Sales representatives working for and on behalf of the Banc de Binary Group  
 18 communicated and interacted with customers buying and trading binary options on the “Banc de  
 19 Binary” internet-based binary options trading platform. *See id.* Ex. A (Kosma Depo. Tr.) at 136:22-  
 20 137:9, 203:20-24.

21 50. ETBO employed “Banc de Binary” sales representatives to promote the “Banc de  
 22 Binary” websites to potential investors. *See id.* Ex. A (Kosma Depo. Tr.) at 137:1-9, 203:20-24.

23 51. The “Banc de Binary” sales representatives interacted with potential investors all  
 24 over the world, including U.S.-based investors. *See id.* Ex. A (Kosma Depo. Tr.) at 139:15-140:1.

25 52. The “Banc de Binary” sales representatives who interacted with U.S.-based  
 26 customers worked for ETBO. *See id.* Ex. A (Kosma Depo. Tr.) at 137:1-9, 203:20-24.

27 53. These “Banc de Binary” sales representatives were often called “[REDACTED].” *See id.*  
 28 Ex. B (Laurent Depo. Tr.) at 114 (“[REDACTED]”)

1 [REDACTED]”), at 116:23-118:2; *see also id.* at  
 2 201:19-20, 202:2-5, 204:22-24, 229:21-230:4, 230:11-14 (in promotional videos, Mr. Laurent  
 3 referring to “[REDACTED],” “[REDACTED]”); *see also id.* at 232:22-24 (Mr. Laurent  
 4 confirming that there were “Banc de Binary” “[REDACTED]” in background of video interview); *id.* Ex. A  
 5 (Kosma Depo. Tr.) at 100:3-7; *id.* Exs. K, L (Depo. Exs. 22, 23) (organizational charts listing  
 6 employees as “broker” and part of “sales desk”; *see id.* Ex. A (Kosma Depo. Tr. at 210:4-19,  
 7 212:18-25 (recognizing and authenticating Exs. 22, 23)); *id.* Ex. M (Depo. Ex. 38) (June 2013  
 8 website screenshot mentioning access “to your own personal broker”; *see id.* Ex. A (Kosma Depo.  
 9 Tr. at 375:21-376:4 (recognizing and authenticating Ex. 38)).

10 54. The fees earned from binary options trading were called “[REDACTED].” *Id.* Ex. A  
 11 (Kosma Depo. Tr.) at 185:1-4.

12 55. The “Banc de Binary” sales representatives engaged in “[REDACTED]” “[REDACTED]”  
 13 “[REDACTED].” *Id.* Ex. A (Kosma Depo. Tr.) at 138:4-139:2.

14 56. The “Banc de Binary” sales representatives “[REDACTED]” customers to transact and  
 15 trade binary options on the “Banc de Binary” trading platform. *Id.* Ex. A (Kosma Depo. Tr.) at  
 16 139:2-9.

17 57. The “Banc de Binary” website listed “Senior Brokers” whom investors could contact  
 18 by calling them, emailing with them or Skyping with them. *See id.* Ex. H (Depo. Ex. 7) (Sept. 2012  
 19 website screenshot); *see id.* Ex. B (Laurent Depo. Tr.) at 183:24-184:6 (Mr. Laurent authenticating  
 20 and recognizing website screenshot), 194:3-11; *id.* Exs. N, O (Depo. Exs. 39, 40) (June 2013  
 21 website screenshots listing ways to “contact us,” including “live support 24 hours with trading  
 22 experts”; *see id.* Ex. A (Kosma Depo. Tr. at 382:22-383:18 (recognizing and authenticating Exs. 39,  
 23 40)).

24 58. The Banc de Binary Group posted videos on the internet “[REDACTED]”  
 25 “[REDACTED]” in order “[REDACTED]”  
 26 “[REDACTED].” *Id.* Ex. B (Laurent Depo. Tr.) at 169:1-14.

27 59. The website [www.bbinary.com](http://www.bbinary.com) states that it offers the services of “brokers” who  
 28 “provide up-to-date trading signals and advice.” *See* Sec. Am. Compl. (Dkt. No. 58) ¶ 37, Defs.



1 Answr. (Dkt. No. 64) ¶ 37.

2 60. BdB Ltd informed U.S. regulators that it acts as an “introducing broker” for binary  
3 option trades that are executed by a market maker licensed with the CySEC. *See* Hakala Decl. (Dkt.  
4 No. 7), Ex. C (Banc de Binary’s “Wells” submission to CFTC) at p. 2.

5 **4. Examples of interactions with U.S.-based customers**

6 61. “Banc de Binary” sales representatives provided specific advice on which binary  
7 options to buy and what parameters to set. *See, e.g.,* Hakala Decl. (Dkt. No. 7), Ex. B (Pierce Inv.  
8 Tr.) at 36, 50; Honeycutt Decl. (Dkt. No. 10), Ex. C (Skype chat with “Banc de Binary”  
9 representatives).

10 62. “Banc de Binary” sales representatives solicited additional investments from U.S.-  
11 based customers by sending them emails, calling them on the telephone, and chatting with them via  
12 instant messenger over the Internet. *See* Hakala Decl. (Dkt. No. 7), Ex. B (Pierce Inv. Tr.) at 22:7-  
13 25; Amine Decl. (Dkt. No. 8) ¶ 6, Exs. D, E, F, G; Beinart Decl. (Dkt. No. 9) ¶ 6, Ex. A; Honeycutt  
14 Decl. (Dkt. No. 10) ¶¶ 5-7, Exs. B, C, D.

15 63. The Banc de Binary Group broadly advertised its website to individuals in the United  
16 States through YouTube videos, spam emails, and other internet-based advertising. *See* Hakala  
17 Decl. (Dkt. No. 7), Ex. B (Pierce Inv. Tr.) at 22:6-23:8; Amine Decl. (Dkt. No. 8) ¶ 2 (solicitation  
18 by YouTube video).

19 **a. Robert Amine**

20 64. One U.S.-based investor in binary options with the Banc de Binary Group was  
21 Robert Amine, a resident of Nevada. *See* Amine Decl. (Dkt. No. 8) ¶ 1.

22 65. After reviewing a “Banc de Binary” YouTube video and “Banc de Binary”’s  
23 website, Mr. Amine opened a trading account with “Banc de Binary” in July 2012. *See id.* ¶ 2.

24 66. In late July and early August 2012, Mr. Amine received a series of emails from a  
25 “Banc de Binary” representative urging him to deposit more money into his account in order to  
26 qualify for a “managed account,” which provided special trading signals and trading advice. *See id.*  
27 ¶ 6.

28 67. Between July and December 2012, he entered into about 880 binary options



1 transactions using several of “Banc de Binary”’s trading platforms. *See id.* ¶ 8. Among other  
 2 binary options, he purchased binary options based on the stock prices of several companies,  
 3 including IBM, Exxon Mobil, Toyota and Unilver. *See id.* ¶ 9.

4 68. The “Banc de Binary” sales representative actively encouraged Mr. Amine to deposit  
 5 more money even after he informed the representative that he was unemployed and had less than  
 6 \$500 in his checking account. *See id.* ¶ 6.

7 69. As of May 2013, Mr. Amine could still access his account and the trading platforms  
 8 on the “Banc de Binary” website. *See id.* ¶ 11.

9 **b. Annie Pierce**

10 70. One U.S.-based investor in binary options with the Banc de Binary Group was Annie  
 11 Pierce, a resident of California. *See Hakala Decl.* (Dkt. No. 7), Ex. B (Pierce Inv. Tr.).

12 71. In late August or early September 2012, Ms. Pierce received a spam email  
 13 advertising “Banc de Binary”’s binary options trading platform. *See id.* (Pierce Inv. Tr.) at 22-23.  
 14 Shortly thereafter, she opened a trading account with “Banc de Binary” and funded her account with  
 15 \$1,000 from her bank account. *See id.* at 32.

16 72. A “Banc de Binary” sales representative contacted Ms. Pierce and convinced her to  
 17 deposit another \$750 into her trading account. *See id.* at 25. Over the next three months, she  
 18 invested in binary options using several of “Banc de Binary”’s trading platforms. *See id.* at 42.  
 19 Among other forms of binary options offered by “Banc de Binary”, she purchased binary options  
 20 based on the stock price of Apple, Tata Motors, and Deutsche Telekom. *See id.* at 48-49.

21 73. At the time, Ms. Pierce was 62 years old, had a monthly income of \$300 and a net  
 22 worth of less than \$20,000. *See id.* at 9, 27-28.

23 74. Neither the “Banc de Binary” sales representative that spoke to her nor anyone else  
 24 at the Banc de Binary Group asked her whether she was an accredited investor, what her assets  
 25 were, or what her income was. *See id.* at 26-27; *see also* Beinart Decl. (Dkt. No. 9) ¶ 3 (customer  
 26 never asked about financial information or if he was an accredited investor).

27 **c. Shari Honeycutt**

28 75. One U.S.-based investor in binary options with the Banc de Binary Group was Shari

1 Honeycutt, a resident of Minnesota. *See* Honeycutt Decl. (Dkt. No. 10) ¶ 1.

2 76. In internet-based Skype chats, a “Banc de Binary” sales representative, who claimed  
3 he was from New York, regularly provided Ms. Honeycutt with specific advice about which binary  
4 options to buy, what option parameters to set (including expiration times and price movements), and  
5 when to trade. *See id.*, e.g., Ex. C (internet-based Skype chats) at pp. 7, 10, 26 (representative to  
6 Honeycutt: “follow my lead,” “let’s regroup when the Asian market opens .... will be trading  
7 thecnically [*sic*]”), pp. 4-5, 9, 12, 13, 15, 18, 25-26, 28, 33 (representative providing specific  
8 suggestions for purchases of binary options based on Nikkei index (stock market index for Tokyo  
9 Stock Exchange), Nasdaq index, and various currencies and commodities).

10 77. The “Banc de Binary” sales representatives who communicated with Ms. Honeycutt  
11 held themselves out as brokers providing trading advice. *See id.*, e.g., Ex. C (internet-based Skype  
12 chats) at pp. 9-10, 20 (representative: “happy to hear we are making money together,” “you are one  
13 of my smallest account [*sic*],” “i am always here for you and allways [*sic*] got your back”), pp. 10,  
14 20, 37 (Honeycutt: “I’m trusting a total stranger with my financial future,” ““You’re promising you  
15 can help me build it,” “I’ve been following [representative’s] signals for months and am not only  
16 NOT making money, I’ve been steadily losing”).

17 78. The “Banc de Binary” sales representative working with Ms. Honeycutt never  
18 stopped encouraging her trading activity despite her telling him that her \$5,000 investment was  
19 “huge for me” and “[t]ook all summer to save it,” and that “I lost \$120,000 of the equity of my  
20 house when my husband died. This is the fastest way I can think of to earn it back.” *Id.*, Ex. C  
21 (internet-based Skype chats) at pp. 10-11.

22 79. The “Banc de Binary” sales representative unknowingly “traded” with Ms.  
23 Honeycutt’s 13-year old son. *See id.*, Ex. C (internet-based Skype chats) at p. 16.

24 80. Ms. Honeycutt received trading signals from “Banc de Binary” as recently as May  
25 29, 2013. *See id.* ¶ 17.

26 81. On May 29, 2013, a “Banc de Binary” sales representative advised Ms. Honeycutt to  
27 purchase binary options based on the price of Pfizer, McDonalds, and Apple stock. *See id.*

28 82. Following that advice, on May 29, 2013, Ms. Honeycutt purchased a binary option

1 based on Pfizer stock. *See id.*, Exs. G, H.

## 2 **5. Representations to U.S. investors**

3 83. Some “Banc de Binary” sales representatives claimed that they lived and worked in  
4 the United States. *See* Hakala Decl. (Dkt. No. 7), Ex. B (Pierce Inv. Tr.) at 39, 45, 76, Ex. 3 (email  
5 from “Banc de Binary” broker holding business out as having an office or headquarters no Wall  
6 Street in New York)); Amine Decl. (Dkt. No. 8), Exs. B, C, D, E (emails from Banc de Binary);  
7 Beinart Decl. (Dkt. No. 9), Exs. B, D (similar); Honeycutt Decl. (Dkt. No. 10) ¶ 4, Exs. A, B  
8 (similar), Ex. C at p. 7 (transcript of Skype chat with representative stating he lives “walking  
9 distance from wall street [sic]”).

10 84. No “Banc de Binary” sales representatives lived or worked in the United States. *See*  
11 Berry Decl. Ex. A (Kosma Depo. Tr.) at 200:4-8.

12 85. Mr. Kosma, the Rule 30(b)(6) designated witness for the corporate defendants and  
13 the internal auditor for BdB Ltd, testified he would have been “[REDACTED]” if he had known that  
14 “Banc de Binary” sales representatives were telling U.S.-based customers that the representatives  
15 lived and worked in New York when they did not, because “[REDACTED].” *Id.* Ex. A (Kosma  
16 Depo. Tr.) at 202:12-22.

17 86. The “Banc de Binary” website and videos claimed that the “Banc de Binary”  
18 business had a physical office and “headquarters” on “Wall St.” in New York, New York. *See id.*  
19 Exs. F, N, O (Depo. Exs. 5, 39, 40); Ex. B (Laurent Depo. Tr.) at 158:11-21 (authenticating Ex. 5,  
20 and acknowledging he wrote it) Ex. A (Kosma Depo. Tr.) at 382:22-383:18 (recognizing and  
21 authenticating Exs. 39, 40)); Hakala Decl. (Dkt. No. 7), Ex. G (Sept. 2012 website page listing New  
22 York address and phone number as “North America Headquarters”), Ex. E (June 2013 website page  
23 listing New York phone number); Beinart Decl. (Dkt. No. 9), Ex. B. (Dec. 2012 website touting  
24 “elite concierge service” for its customers and claiming that this service’s “entire staff is located in  
25 the United States” and that customer information “is secured in our US Based server facilities”).

26 87. The Banc de Binary Group did not have any physical office space or any employees  
27 in the United States. The only presence was a “[REDACTED].” *Id.* Ex. A (Kosma Depo. Tr.) at  
28 375:8-12, 386:9-12; Ex. B (Laurent Depo. Tr.) at 160:24-162:24; 206:25-9, 218:2-4, 226:7-14.

1           88. Mr. Laurent testified that it was a "[REDACTED]" and "[REDACTED]" to claim the Banc de Binary  
2 Group had an office on Wall Street, and that it was a "[REDACTED]" to make such a claim. *Id.* Ex. B  
3 (Laurent Depo. Tr.) at 160:24-162:24, 206:25-9, 218:2-4, 226:7-14.

4           89. The "Banc de Binary" website claimed that the "Banc de Binary" business had a  
5 board of directors in 2010. *See id.* Ex. E (Depo. Ex. 4) (Oct. 2010 website screenshot); Ex. B  
6 (Laurent Depo. Tr.) at 156:9-157:25 (authenticating Ex. 4).

7           90. Mr. Laurent acknowledged that a board "[REDACTED]" and that it "[REDACTED]"  
8 "[REDACTED]" to claim on the website that the "Banc de Binary" business had a board of directors in  
9 2010. *Id.* Ex. B (Laurent Depo. Tr.) at 156:21-157:11.

10          91. Starting in mid-January 2013, the "Banc de Binary" website included the following  
11 message to U.S.-based investors:

12               As of January 25th, 2013, we are in discussions with United States regulators,  
13 including the United States Commodities Futures Trading Commission. We hope to  
14 obtain authorization for Banc De Binary (either directly, through affiliates and/or via  
15 arrangement with unaffiliated regulated financial entities) to offer our regulated  
16 products to parties within the United States.

17               Registration in the United States takes time, so we ask for your patience. Check back  
18 with us for updates concerning the anticipated future availability of our current and  
19 in-development products and services to parties within the United States...

20               BDB [Banc de Binary] has been advised by the CFTC that it is not permitted to  
21 market binary options to United States persons. Thus, BDB will not take orders  
22 from United States persons. BDB intends to abide by all laws regulations and hopes  
23 to obtain permission to do business in the United States. Until then, BDB will not be  
24 permitted to offer its products to United States customers. Please check back on our  
25 website periodically for updates. Thank you for your patience.

26 *See Hakala Decl.* (Dkt. No. 7), Ex. B (Pierce Inv. Tr. Ex. 23).

27          92. After January 2013, U.S.-based customers could still buy and trade binary options  
28 offered on the "Banc de Binary" websites. They could do so until at least late May or June 2013.

1 See Amine Decl. (Dkt. No. 8) ¶ 11; Honeycutt Decl. (Dkt. No. 10) ¶ 17, *id.* Exs. G, H.

2 **6. Alleged violations of preliminary injunction in the parallel CFTC case**

3 93. In the parallel enforcement action brought by the Commodity Futures Trading  
4 Commission (the “CFTC”), *CFTC v. Banc de Binary Ltd.*, 2:13-CV-00992-MMD-VCF, the Court  
5 entered a preliminary injunction order (with the consent of BdB Ltd) on July 18, 2013, prohibiting  
6 BdB Ltd “and all corporations ... or other entities ... otherwise affiliated with [BdB Ltd]” from  
7 “offering to, soliciting, or accepting any orders or funds from any person located in the U.S. (or its  
8 territories), through any website or by any other means, for the purpose of purchasing or selling ...  
9 binary options as offered by the Defendant on the www.bbinary.com website (including affiliated  
10 websites).” *CFTC v. Banc de Binary Ltd.*, 2:13-CV-00992-MMD-VCF, Dkt. No. 24 (order), at ¶  
11 12.

12 94. After the entry of this injunction, one “Banc de Binary” sale representative and one  
13 “Banc de Binary” account manager communicated with a U.S.-based client in August and  
14 September 2013, offering trading advice and encouraging the client to invest more money. *CFTC v.*  
15 *Banc de Binary Ltd.*, 2:13-CV-00992-MMD-VCF, Dkt. No. 48-1 (Goetz Decl.) ¶¶ 13, 16, 17, 20,  
16 Ex. 1 at 107-108.

17 95. In its opposition to the CFTC’s motion for contempt, BdB Ltd did not contest that  
18 the alleged communications between its sales representative and account manager had occurred.  
19 BdB Ltd stated in its opposition that these communications involved just “one broker” and a “rogue  
20 account manager.” *CFTC v. Banc de Binary Ltd.*, 2:13-CV-00992-MMD-VCF, Dkt. No. 56 (BdB  
21 Ltd response to OSC), at 2:15, 10:1

22 **C. The Unregistered Offer and Sale of Securities to U.S.-Based Customers**

23 96. The Banc de Binary Group is in the business of offering and selling “binary options”  
24 to investors worldwide. See Berry Decl. Ex. A (Kosma Depo. Tr.) at 47:14-24.

25 97. According to defendants, ETBO was the first company in the “Banc de Binary”  
26 Group. It was formed sometime in 2010. See *id.* Ex. A (Kosma Depo. Tr.) at 113:4-17; *id.* Ex. B  
27 (Laurent Depo. Tr.) at 60:17-23 (“[REDACTED]”).

28 98. According to defendants, BO Systems was incorporated in 2012. See *id.* Ex. P

(ETBO response to 1st set of SEC requests for admissions) at 5:8-22, Ex. Q (BO Systems response to 1st set of SEC requests for admissions) at 4:15-19, Ex. R (ETBO response to 1st set of SEC interrogatories) at 5:8-22, Ex. S (BO Systems response to 1st set of SEC interrogatories) at 5:10-23.

99. Mr. Kosma was the Rule 30(b)(6) witness designed to testify by and on behalf of ETBO and BO Systems regarding, among other topics, “the offer or sale of binary options to U.S.-based investors.” *See* Berry Decl. Ex. T (deposition notice). Mr. Kosma testified as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Id.* Ex. A (Kosma Depo. Tr.) at 240:10-24.

100. The Banc de Binary Group, from at least September 2010 through June 2013, offered and sold binary options to U.S.-based customers. *See id.* Ex. A (Kosma Depo. Tr.) at 47:14-24, 240:15-24; *id.* Ex. B (Laurent Depo. Tr.) at 192:22-193:7 (Mr. Laurent acknowledging that brokers listed on the [www.bbinary.com](http://www.bbinary.com) website in Sept. 2012 “[REDACTED]” have offered and sold binary options to U.S.-based investors) (referring to Ex. H (Depo. Ex. 7)) (Sept. 2012 website screenshot listing “brokers”)).

101. One “Banc de Binary” sales representative told a U.S.-based investor that “Banc de Binary” had about 250,000 investors in the fall of 2012, and 50 to 60% of those investors were located in the United States. *See* Beinart Decl. (Dkt. No. 9) ¶ 4.

102. From at least 2010 through at least the first quarter of 2013, the Banc de Binary Group engaged in marketing activities to promote its websites to customers worldwide, without any distinction to where the customers were from. *See* Berry Decl. Ex. A (Kosma Depo. Tr.) at 136:6-

1 13.

2 103. From at least 2010 through at least the first quarter of 2013, no one at the Banc de  
3 Binary Group instructed “Banc de Binary” sales representatives with whom to interact. *Id.* Ex. A  
4 (Kosma Depo. Tr.) at 139:21-140:1. During this time, these sales representatives were interacting  
5 with customers all over the world, including U.S.-based customers. *See id.* at 139:10-20.

6 104. From at least 2010 through at least the first quarter of 2013, the Banc de Binary  
7 Group knew that its marketing efforts were reaching U.S.-based customers to encourage them to go  
8 to “Banc de Binary” websites. *See id.* Ex. A (Kosma Depo. Tr.) at 136:14-19.

9 105. From at least 2010 through at least the first quarter of 2013, ETBO or BO Systems  
10 business engaged third parties to help market or advertise its websites to U.S.-based customers. *See*  
11 *id.* Ex. A (Kosma Depo. Tr.) at 130:4-11, 132:9-21.

12 106. From at least 2010 through at least the first quarter of 2013, ETBO or BO Systems  
13 marketed the “Banc de Binary” binary option trading platform and binary options to U.S.-based  
14 investors. *See id.* Ex. A (Kosma Depo. Tr.) at 241:9-17.

15 107. From at least 2010 through at least the first quarter of 2013, ETBO or BO Systems  
16 interacted with U.S.-based investors as part of the “Banc de Binary” business. *See id.* Ex. A  
17 (Kosma Depo. Tr.) at 126:21-127:1.

18 108. From at least 2010 through at least July 2013, ETBO or BO Systems transacted with  
19 U.S.-based investors as part of the “Banc de Binary” business. *See id.* Ex. A (Kosma Depo. Tr.) at  
20 227:3-7, 228:3-18, 230:2-15.

21 109. From at least 2010 through at least the first quarter of 2013, ETBO or BO Systems  
22 had U.S.-based customers. *See id.* Ex. A (Kosma Depo. Tr.) at 241:18-22, 333:9-334:12, 347:14-  
23 348:3; *id.* Ex. P (ETBO response to 1st set of SEC requests for admissions) at 4:15-21, Ex. Q (BO  
24 Systems response to 1st set of SEC requests for admissions) at 4:15-19, Ex. R (ETBO response to  
25 1st set of SEC interrogatories) at 6:18-24, Ex. S (BO Systems response to 1st set of SEC  
26 interrogatories) at 5:10-17.

27 110. From at least 2010 through at least May 2012, ETBO offered and sold securities, in  
28 the form of binary options, to U.S.-based investors. *See id.* Ex. A (Kosma Depo. Tr.) at 240:10-19.



111. From at least May 2012 through at least June 2013, BO Systems offered and sold securities, in the form of binary options, to U.S.-based customers. *See id.* Ex. A (Kosma Depo. Tr.) at 240:10:14, 240:20-24; Sec. Am. Compl. (Dkt. No. 73) ¶ 36, Defs. Answer. (Dkt. No. 64) ¶ 73.

112. None of the Defendants have registered the sale and offer of binary options to U.S.-based investors or customers with the SEC. *See Berry Decl.* Ex. A (Kosma Depo. Tr.) at 247:6-248:1, 248:14-22; Sec. Am. Compl. (Dkt. No. 58) ¶ 79, Defs. Answer. (Dkt. No. 64) ¶ 79.

113. No registration statement has ever been filed with the SEC for the offer or sale of any of the binary options offered or sold by any of the Defendants. *See Berry Decl.* Ex. A (Kosma Depo. Tr.) at 247:6-248:1, 248:14-22; Sec. Am. Compl. (Dkt. No. 58) ¶ 79, Defs. Answer. (Dkt. No. 64) ¶ 79.

114. ETBO has never registered with the SEC the offer or sale of binary options to U.S.-based investors or customers. *See Berry Decl.* Ex. A (Kosma Depo. Tr.) at 247:6-248:1, 248:14-22; Sec. Am. Compl. (Dkt. No. 58) ¶ 79, Defs. Answer. (Dkt. No. 64) ¶ 79.

115. BO Systems has never registered with the SEC the offer or sale of binary options to U.S.-based investors or customers. *See Berry Decl.* Ex. A (Kosma Depo. Tr.) at 247:6-248:1, 248:14-22; Sec. Am. Compl. (Dkt. No. 58) ¶ 79, Defs. Answer. (Dkt. No. 64) ¶ 79.

#### **D. Acting as Unregistered Broker-Dealers**

116. When ETBO was transacting with U.S.-based investors (*i.e.*, up until May 2012), those investors deposited their funds for binary options trading in a bank account of ETBO. *See Berry Decl.* Ex. A (Kosma Depo. Tr.) at 233:23-234:2, 235:19-24.

117. ETBO has held funds on behalf of U.S.-based customers in connection with binary options trading on the “Banc de Binary” website, [www.bbinary.com](http://www.bbinary.com). *See Sec. Am. Compl.* (Dkt. No. 58) ¶ 97, Defs. Answer. (Dkt. No. 64) ¶ 97.

118. When BO Systems was transacting with U.S.-based investors (*i.e.*, from May 2012 to June 2013), those investors deposited their funds for binary options trading in a bank account of BdB Ltd. *See Berry Decl.* Ex. A (Kosma Depo. Tr.) at 234:19-235:4, 235:25-236:14. BdB Ltd held these funds on account of BO Systems and its investors. *See also id.* at 236:15-238:6.

119. Through a bank account of BdB Ltd, BO Systems has held funds on behalf of U.S.-



1 based customers in connection with binary options trading on the “Banc de Binary” website,  
 2 [www.bbinary.com](http://www.bbinary.com). *See id.* Ex. A (Kosma Depo. Tr.) at 234:19-235:4, 235:25-238:6.

3 120. The income earned by ETBO and BO Systems from binary options trading was  
 4 transaction-based. *See id.* Ex. A (Kosma Depo. Tr.) at 187:9-16; *see also id.* at 185:1-4, 192:9-17;  
 5 Ex. B (Laurent Depo. Tr.) at 121:7-13.

6 121. More than one or two binary options transactions were consummated per day on the  
 7 “Banc de Binary” website trading platforms. *See id.* Ex. A (Kosma Depo. Tr.) at 194:25-195:23.

8 122. Currently, there are “[REDACTED]” of binary options transactions on the “Banc de  
 9 Binary” website trading platforms. *Id.* Ex. B (Laurent Depo.) Tr. at 119:6-18.

10 123. Buying and trading options on “Banc de Binary” website trading platforms occurred  
 11 on a “regular basis.” *Id.* Ex. B (Laurent Depo. Tr.) at 118:4-17.

12 124. None of the Defendants have registered as a broker or a dealer with the SEC. *See*  
 13 Sec. Am. Compl. (Dkt. No. 58) ¶¶ 116-119, Defs. Answer. (Dkt. No. 64) ¶¶ 116-119; Berry Decl.  
 14 Ex. A (Kosma Depo. Tr.) at 248:2-10.

15 125. ETBO has never registered with the SEC as a broker or a dealer. *See* Berry Decl.  
 16 Ex. A (Kosma Depo. Tr.) at 248:8-10; Sec. Am. Compl. (Dkt. No. 58) ¶ 117, Defs. Answer. (Dkt.  
 17 No. 64) ¶ 117.

18 126. BO Systems has never registered with the SEC as a broker or a dealer. *See* Berry  
 19 Decl. Ex. A (Kosma Depo. Tr.) at 248:2-7; Sec. Am. Compl. (Dkt. No. 58) ¶ 118, Defs. Answer.  
 20 (Dkt. No. 64) ¶ 118.

21 **E. Mr. Laurent’s Assertions of the Fifth Amendment**

22 127. Mr. Laurent gave sworn testimony in a deposition in this case on July 8, 2014 in  
 23 Washington, D.C. *See* Berry Decl. ¶ 4, Ex. B.

24 128. On certain occasions in his deposition, Mr. Laurent asserted the Fifth Amendment  
 25 solely to keep information “[REDACTED].” *Id.* Ex. B (Laurent Depo. Tr.) at 233:8-234:12 (asserting  
 26 Fifth Amendment privilege to a question regarding a milestone for the number of customer  
 27 accounts, and then acknowledging he asserted privilege just because “[REDACTED]  
 28 [REDACTED]” and, when asked “[REDACTED]

1 [REDACTED],” Mr. Laurent responded: “[REDACTED]  
 2 [REDACTED]”); *see also id.* at 237:22-238:25 (SEC counsel noting  
 3 objection to assertions, with defense counsel’s response).

4 **1. The offer and sale of binary options to U.S. customers**

5 129. When asked whether the Banc de Binary Group of companies offered or sold binary  
 6 options to U.S.-based customers from September 2010 to June 2013, [REDACTED]  
 7 [REDACTED] *See id.* Ex. B (Laurent Depo. Tr.) at 81:16-20, 83:10-13; *see also id.* at  
 8 195:13-20.

9 130. When asked whether ETBO offered or sold binary options to U.S.-based customers  
 10 from September 2010 to June 2013, [REDACTED] *See id.*  
 11 Ex. B (Laurent Depo. Tr.) at 81:21-24, 82:11-17, 83:14-17.

12 131. Even though he is the owner of BO Systems, [REDACTED]  
 13 [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 82:25-83:5.  
 14 However, when asked whether a company with “BO Systems” in its name offered or sold binary  
 15 options to U.S.-based customers from September 2010 to June 2013, [REDACTED]  
 16 [REDACTED] *See id.* at 85:4-7.

17 132. When asked whether any Banc de Binary Group company, including ETBO and BO  
 18 Systems, marketed binary options to U.S.-based customers, [REDACTED]  
 19 [REDACTED] *See id.* Ex. B (Laurent Depo. Tr.) at 86:11-18, 86:23-87:1.

20 133. When asked whether any Banc de Binary Group company, including ETBO and BO  
 21 Systems, solicited U.S.-based customers to buy binary options, [REDACTED]  
 22 [REDACTED] *See id.* Ex. B (Laurent Depo. Tr.) at 85:13-23, 86:3-6.

23 134. When asked what percentage of “Banc de Binary” client accounts in 2012 were in  
 24 the United States, [REDACTED]. *See id.* Ex. B (Laurent  
 25 Depo. Tr.) at 220:5-8; *see also id.* at 200:3-10 (discussing when video being discussed in testimony  
 26 was made).

27 **2. The unregistered brokerage activity in the U.S.**

28 135. When asked whether Banc de Binary’s income from U.S. customers was transaction

based” before June 2013, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 122:13-19.

136. When asked whether the income from U.S. customers for ETBO or a company with “BO Systems” in its name was transaction-based, [REDACTED]. *Id.* Ex. B (Laurent Depo. Tr.) at 124:1-11.

137. When asked whether U.S.-based customers regularly transacted on “Banc de Binary” websites before June 2013, [REDACTED]. *Id.* Ex. B (Laurent Depo. Tr.) at 122:20-22.

138. When asked whether websites of either ETBO or a company with “BO Systems” in its name regularly transacted with U.S. customers before June 2013, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 123:6-11.

139. When asked how many transactions of binary options are taking place on “Banc de Binary” websites per day, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 118:18-23.

140. When asked whether, before June 2013, “Banc de Binary” websites consummated transactions on behalf of U.S.-based customers, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 123:2-5.

141. When asked which entity paid or employed the brokers that interacted with U.S.-based customers, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 144:15-145:3, 145:20-25.

### **3. Mr. Laurent’s role in the offer and sale of binary options in the U.S.**

142. When asked whether he had any day-to-day involvement in offering, selling or marketing binary options to U.S. investors, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 112:11-20.

143. When asked whether he had any day-to-day involvement in marketing binary options to U.S.-based customers or soliciting U.S.-based customers, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 112:21-24.

144. When asked whether his role in providing “[REDACTED]” for the Banc de Binary Group

1 included giving direction about marketing binary options to U.S.-based customers, [REDACTED]  
2 [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 111:9-112:10.

3 145. When asked whether he had any day-to-day involvement in managing anyone in the  
4 Bank de Binary Group who offered investment advice to U.S.-based customers, [REDACTED]  
5 [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 112:25-113:7; *see*  
6 *also id.* at 113:15-114:13.

7 146. When asked whether he offered or sold binary options to people in the United States  
8 while he was CEO of BdB Ltd and ETBO, [REDACTED].  
9 *See id.* Ex. B (Laurent Depo. Tr.) at 163:25-164:4.

10 147. When asked how much in revenue and profits the Banc de Binary Group made in  
11 2010, 2011 and 2012, [REDACTED]. *See id.* Ex. B (Laurent  
12 Depo. Tr.) at 242:15-5.

#### 13 4. Representations to U.S. investors

14 148. When asked whether he ever had a reason to doubt the accuracy of any of the  
15 information on the www.bbinary.com website, [REDACTED].  
16 *See id.* Ex. B (Laurent Depo. Tr.) at 150:20-25.

17 149. When asked if he knew whether any of the brokers that worked for the Banc de  
18 Binary Group ever told U.S.-based customers that the brokers were physically located in the United  
19 States, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at  
20 165:18-22.

21 150. When asked whether he instructed any of the brokers that worked for the Banc de  
22 Binary Group to tell U.S.-based customers that the brokers were physically located in the United  
23 States, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at  
24 165:23-166:2.

25 151. When asked whether he directed any of the brokers that worked for the Banc de  
26 Binary Group to communicate to U.S.-based customers that the Banc de Binary Group had a  
27 presence in the United States, [REDACTED]. *See id.* Ex. B  
28 (Laurent Depo. Tr.) at 166:3-9.

152. When asked whether he was aware that there was no way to prevent internet-based videos about the “Banc de Binary” binary option trading website platforms from being available in the United States, [REDACTED]. *See id.* Ex. B (Laurent Depo. Tr.) at 169:25-170:4.

**F. Testimony of the Corporate Defendants’ Rule 30(b)(6) Witness**

153. Marios Kosma testified on behalf of ETBO and BO Systems (and BdB Ltd and BDB Services) under Rule 30(b)(6) of the Federal Rules of Procedure on July 9 and 10, 2014. *See Berry Decl.* ¶ 3, Ex. A.

154. Mr. Kosma testified pursuant to the SEC’s Rule 30(b)(6) notice of deposition dated June 17, 2014, which called for testimony from Mr. Kosma as to eight different topics: (1) the offer or sale of binary options to U.S.-based investors by the four corporate defendants from 2010 to the present; (2) the solicitation of U.S.-based investors by the four corporate defendants from 2010 to the present; (3) the binary option trading platforms owned or operated by the four corporate defendants from 2010 to the present; (4) any commissions or other compensation received by the court corporate defendants from binary option trading by U.S.-based investors from 2010 to the present; (5) any bank accounts of the four corporate defendants that received funds from U.S.-based investors; (6) the operation, management or ownership of “Banc de Binary” websites where U.S.-based investors could buy and trade binary options from 2010 to the present; (7) communications between the four corporation defendants and the Cyprus Securities and Exchange Commission from 2010 to the present; and (8) the alleged blocking of access to “Banc de Binary” websites, as set forth in the declaration of Tomer Raz, dated July 9, 2013 (Dkt. No. 19-1). *See id.* ¶ 3, Ex. B.

155. [REDACTED] *See id.* Ex. A (Kosma Depo. Tr.) at 198:19-200:3; *see also id.* Ex. T (deposition notice topic nos. 1, 2).

156. [REDACTED] *See id.* Ex. A (Kosma Depo. Tr.) at 206:2-207:23; *see also id.* Ex. H (Depo. Ex. 7) (website screenshot); Ex. T (deposition notice topic nos. 1, 2, 6).

1 157. [REDACTED]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] See Kosma Depo. Tr. at 360:15-364:14; *see also* Berry Decl. Ex. T (deposition notice  
5 topic nos. 1, 2, 3, 6).

6 158. The preliminary injunction was entered against BdB Ltd on July 30, 2013, and that  
7 order prohibited BdB Ltd and its “affiliates” from offering and selling in the United States binary  
8 options that are based on stock or stock indices and that are offered on Banc de Binary’s website  
9 (www.bbinary.com), unless a registration statement is in effect as to such binary options.” See  
10 Order granting preliminary injunction. (Dkt. No. 28) at 12; *see also* Order denying motion for  
11 reconsideration and granting preliminary injunction. (Dkt. No. 31) at 12.

12 159. [REDACTED]

13 [REDACTED] See  
14 Berry Decl. Ex. A (Kosma Depo. Tr.) at 120:14-19; *see also id.* Ex. T (deposition notice topic nos.  
15 1, 2, 8).

16 160. [REDACTED]

17 [REDACTED] See *id.* Ex. A (Kosma Depo. Tr.)  
18 at 122:3-22; *see also id.* Ex. T (deposition notice topic nos. 1, 2, 8).

19 161. [REDACTED]

20 [REDACTED] See *id.* Ex. A (Kosma Depo.  
21 Tr.) at 124:9-12. [REDACTED]

22 [REDACTED]  
23 2013. See *id.* at 124:13-18; *see also id.* Ex. T (deposition notice topic nos. 1, 2, 8).

24 162. [REDACTED]

25 [REDACTED] See Ex. A.  
26 (Kosma Depo. Tr.) at 168:25-169:15; *see also id.* at 172:15-18, 174:4-8; *see also* Berry Decl. Ex. T  
27 (deposition notice topic no. 6); *id.* Exs. I, J (Depo. Exs. 19, 20) (*see id.* Ex. A (Kosma Depo. Tr.) at  
28 145:10-23, 174:23-175:4 (recognizing and authenticating Exs. 19, 20)).

1 163. [REDACTED]

2 [REDACTED] *See id.* Ex. A (Kosma Depo. Tr.) at 54:10-55:23 (acknowledging  
3 that his only understanding of the “blocking” of access to the websites was the declaration of Tomar  
4 Raz, whom he never spoke to, that he has no personal knowledge of whether either company  
5 continues to interact with U.S.-based customers, and that he never spoke to sales representatives of  
6 either company).

7  
8 Dated: October 8, 2014

Respectfully submitted,

9 /s/ John W. Berry

10 John W. Berry  
11 Amy J. Longo  
12 Leslie A. Hakala  
Attorneys for Plaintiff  
Securities and Exchange Commission

**PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,  
444 S. Flower Street, Suite 900 Los Angeles, California 90071  
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904

On October 8, 2014, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S STATEMENT OF STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS OREN SHABAT MR. LAURENT (F/K/A OREN SHABAT), ET BINARY OPTIONS LTD. AND BO SYSTEMS LTD. SEYCHELLES** on all the parties to this action addressed as stated on the attached service list:

☐ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☐ **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

☐ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☒ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 8, 2014

/s/ Susan G. Cavallone  
Susan G. Cavallone



**SEC v. Banc de Binary Ltd, et al.**  
**United States District Court—District of Nevada**  
**Case No. 2:13-cv-00993-RCJ-VCF**

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